

FILED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
2007 DEC -3 PM 3:04
LARRY A. BRIGGS
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ESSROC CEMENT CORPORATION,

Defendant.

4 : 07 -cv- 0157 -JDT -WGH

CONSENT DECREE

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BACKGROUND

Plaintiff United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), filed a Complaint in this action concurrently with lodging this Consent Decree, seeking civil penalties and injunctive relief against Essroc Cement Corporation ("Essroc") for violations of the Clean Air Act as amended ("CAA" or the "Act"), 42 U.S.C. § 7401 *et seq.*, the National Emissions Standard for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry (the "Portland Cement NESHAP regulations"), codified at 40 C.F.R. Part 63, Subpart LLL; the Indiana State Implementation Plan ("SIP") adopted pursuant to Section 110 of the Act, 42 U.S.C. § 7410; and provisions of the federally enforceable operating permit issued to Essroc pursuant to Subchapter V of the Act, 42 U.S.C. § 7611.

Specifically, the Complaint alleges that at various times from mid-2002 to at least December 2004, Essroc, among other things, violated opacity emission limitations ("limits") at the electrostatic precipitator ("ESP") which controlled its raw mill and kiln #2; it also exceeded applicable baghouse temperature limits at another kiln; and failed to conduct monthly and daily visible emission checks at a number of sources within its facility. The alleged violations took place at Essroc's portland cement manufacturing facility in Speed, Indiana (the "Facility").

As of May 31, 2007, Essroc installed a new fabric filter baghouse on the kiln #2 main stack, among other things to replace the ESP as a means of controlling emissions from the raw mill and kiln #2. A larger baghouse than needed for environmental compliance was installed to provide better performance and a greater bag life and to accommodate loadings associated with any expansion Essroc may seek to permit in the future.

Defendant does not admit liability to the United States for the occurrences alleged in the Complaint.

The parties recognize and the Court, by entering this Consent Decree, finds that this Consent Decree has been negotiated in good faith, will avoid difficult and protracted litigation and is fair, reasonable and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without adjudication or admission of any issue of fact or law (except as provided in Section I.1 below), and upon the consent and agreement of the parties, it is ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND NOTICE

1. This Court has personal jurisdiction over Essroc and subject matter jurisdiction over this action pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345 and 1355. Venue is proper in this District pursuant to Section 113(b) and 28 U.S.C. §1395 (a) because the alleged violations occurred at Essroc's Facility, which is within this District. The parties agree not to contest the jurisdiction of the Court to enter and enforce this Decree.

2. In accordance with Section 113(b) of the Act, 42 U.S.C. § 7413(b), the United States provided notice of the commencement of this action to the Indiana Department of Environmental Management ("IDEM").

II. APPLICABILITY

3. This Consent Decree shall apply to and be binding upon the United States and upon Essroc, its agents, successors and assigns.

4. No changes in ownership or corporate status of Essroc, including but not limited to transfers of shares, assets or other real or personal property, shall alter Essroc's obligations under this Decree. If Essroc proposes to sell, lease or transfer the real property or operations subject to this Decree, it shall provide a copy of the Decree to any prospective purchaser or successor in interest and shall condition the sale or transfer upon agreement by the purchaser or transferee to be subject to the obligations of this Consent Decree and to submit to the jurisdiction of this Court.

5. Defendant shall provide a copy of this Consent Decree to all officers, employees and agents whose duties include compliance with any provision of this Consent Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree. Notwithstanding any such retention of contractors, Defendant shall be responsible for ensuring that all work is performed in accordance with the requirements of this Consent Decree.

6. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents or contractors to take any actions necessary to comply with the provisions of this Decree.

III. CIVIL PENALTY

7. Within 30 days of entry of this Consent Decree, Defendant shall pay a civil penalty of \$750,000 to the United States in settlement of claims in the Complaint for alleged violations prior to the date of lodging of this Consent Decree. Payment shall be made by Electronic Funds Transfer ("EFT") to the U.S. Department of Justice, in accordance with EFT procedures and payment instructions provided by the Financial Litigation Unit of the U.S. Attorney's Office in the Southern District of Indiana. Payment shall reference the caption and civil action number of this case and the U.S. Attorney's Office ("USAO") file number 2005-V00715. Essroc shall provide notice of such payment, with the same reference information, to:

U.S. EPA, Region 5
Financial Management Branch (MF-10J)
77 W. Jackson Blvd.
Chicago, IL 60604

Chief, Environmental Enforcement Section
Re: DJ #90-5-2-1-2090/1
U.S. Department of Justice
Post Office Box 7611
Washington, D.C. 20044

8. No amount of the foregoing civil penalty or any stipulated penalty paid under Section VII of this Decree shall be deductible for federal or State income tax purposes.

IV. INJUNCTIVE RELIEF

9. Beginning 30 days after entry of this Decree, visible emissions from the Defendant's S-15 stack shall not exceed the opacity limits under the various operating conditions described below.

(a) Visible emissions from the S-15 stack shall not exceed 20 per cent opacity

when the Todd furnace and the Loesche raw mill are on, the Loesche raw mill inlet damper is open and the fourth stage kiln gas temperatures are higher than 200 degrees Fahrenheit;

(b) Visible emissions from the S-15 stack shall not exceed 10 per cent opacity when the Todd furnace is operating in any other configuration;

(c) Visible emissions from the S-15 stack shall not exceed 20 per cent opacity when the Todd furnace is not operating but kiln #2 and the Loesche raw mill are operating or kiln #2 alone is operating.

10. In reporting excess emissions, Essroc shall comply with the provisions of 40 C.F.R. §§ 63.10(e)(3) and 63.1354(b)(8) on a quarterly (rather than on a semi-annual) basis. Pursuant to these provisions, in reporting emissions from the S-15 stack, Essroc shall include in its Quarterly Opacity Excess Emission Report for each operating period: (1) the date and time when the Todd furnace commenced and ceased operation; (2) the status of the Loesche raw mill inlet damper (open or closed) when the Todd furnace is operating; (3) and the fourth stage kiln gas temperature in degrees Fahrenheit when the Todd furnace is operating.

11. No later than 30 days after lodging of this Consent Decree, Essroc shall enter into a Stay Agreement with IDEM to be submitted for approval and entry by the Indiana Office of Environmental Adjudication in Cause No. 04-A-J-3386, in which the parties agree that Essroc will be bound by the emission limits in paragraph 9 of this Decree in place of the limits in Condition 3.5 of its current operating permit. The Stay Agreement shall be in effect until such time as the paragraph 9 limits are incorporated into a permit that reflects settlement of all issues in the pending permit appeal. The Stay Agreement shall also vacate the current stay of

limitations in Condition 3.5 of the permit that was entered by the Office of Environmental Adjudication on September 12, 2005. Within 10 business days of entry, Defendant shall submit copies of the Stay Agreement as entered to U.S. EPA. Although the State of Indiana is not a party to this Decree, the requirements in this paragraph have been coordinated with IDEM and the Parties are satisfied that they are feasible.

12. No later than 30 days after lodging of this Consent Decree, Defendant shall certify completion of the new fabric filter baghouse on the dry process rotary kiln #2 main stack. In addition to information as to the size, capacity and cost of the baghouse, such certification shall include the results of the compliance test(s) on the new baghouse conducted on June 8 and 12, 2007, which confirm that installation and operation of the new baghouse has resulted in ongoing compliance with the opacity limits in paragraph 9 of this Decree. The certification shall be submitted in accordance with the directions in paragraph 46 of this Decree.

13. All work undertaken by Defendant pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal, state and local laws, permits and regulations. In operating the Facility, Defendant shall comply with all applicable NESHAP and other requirements including, but not limited to, the provisions in 40 C.F.R. Part 63, Subpart LLL and those in the Indiana SIP. This Consent Decree in no way relieves Defendant of its responsibility to comply with these and other potentially applicable Clean Air Act requirements, including those governing the PSD and/or NSPS programs.

V. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

14. Defendant shall implement, as Supplemental Environmental Projects ("SEP"s), a

clinker storage building entrance enclosure project with related improvements and a road paving project, as described below.

15. Clinker Storage Building Entrance Enclosure and Related Improvements.

Defendant will construct an enclosure at the entrance of its clinker storage building that will be equipped with an air curtain and ventilation system and a dust collector and ductwork to prevent emissions of dust from the clinker storage hall entrance door. In addition, horizontal dust collectors will be installed and/or relocated in the stair tower and other transfer points to eliminate or minimize fugitive dust from these locations. A roof penthouse will also be installed over the incline belt where it enters the building, to create a dust free entryway. It is anticipated that this SEP will result in a net reduction of 354 tons per year of particulate matter ("PM"). In implementing this SEP, the Defendant has estimated that it will spend no less than \$600,000, which is the agreed upon cost for purposes of calculating the civil penalty in this case.

16. Construction shall commence on the Clinker Storage Building enclosure and related improvements by no later than December 1, 2007 and shall be completed on or before March 31, 2008.

17. Paving Program. Essroc will pave some 900 linear feet of roads at its Facility which have a high concentration of vehicular traffic, including roads between the maintenance office and the receiving area to the bridge located between the main plant area and the finish area. Trucks on these roads bring in shipments of coal, fly ash, bottom ash and clay to the production areas of the plant. The roads are also used for internal transport of clinker and

crushed limestone to the finish mills. The areas to be paved are shown on Attachment B to this Consent Decree. It is anticipated that this SEP will result in a reduction of fugitive particulate emissions from formerly unpaved roadway segments by 88%, from 19.4 tons per year ("tpy") to 2.2 tpy.

18. In implementing this SEP, the Defendant will spend no less than \$300,000, which is the agreed upon cost of the paving project for penalty calculation purposes.

19. This SEP shall be implemented according to the following schedule:

- (a) One third of all unpaved roads identified in the map attached as Attachment B shall be paved by December 1, 2007;
- (b) Two thirds of all unpaved roads identified in Attachment B shall be paved by December 1, 2008;
- (c) All remaining unpaved roads identified in Attachment B shall be paved by December 1, 2009.

20. Defendant is responsible for the satisfactory completion of the Clinker Storage Building Entrance and Paving Program SEPs in accordance with the requirements of this Decree. Subject to the recoupment provision in paragraph 29(c) of this Decree, Defendant shall spend not less than the amounts set forth in paragraphs 15 and 18 for these SEPs.

21. Defendant certifies that all cost information provided to EPA in connection with EPA's approval of the Clinker Storage Building Entrance and Related Improvements SEP and the Paving Program SEP is complete and accurate and represents a fair estimate of the costs necessary to implement these SEPs.

22. Defendant certifies the truth and accuracy of each of the following:

- (a) That as of the date of executing this Decree, Defendant is not required to

perform or develop the Clinker Storage Building Entrance and Paving Program SEPs by any federal, state or local law or regulation, nor is Defendant required to perform or develop these SEPs by agreement, grant or as injunctive relief awarded in any other action in any forum;

(b) That the Clinker Storage Building Entrance and Paving Program SEPs were not projects that Defendant was planning or intending to construct, perform or implement other than in settlement of the claims resolved in this Decree;

(c) That Defendant has not received, and is not negotiating to receive credit for these SEPs in any other enforcement action; and

(d) That Defendant will not receive any reimbursement for any portion of the SEPs from any third party.

23. SEP Completion Reports

(a) Defendant shall submit a SEP Completion Report to EPA 45 days after completion of the Clinker Storage Building and Related Improvements SEP and within 45 days after completion of each phase of the paving project, as provided for in paragraph 19 of this Decree. Each SEP Completion Report shall contain the following information:

- i. A detailed description of the SEP as implemented;
- ii. A description of any problems encountered in completing the SEP and the solution(s) thereto;
- iii. An itemized list of all eligible SEP costs, with copies of supporting documentation;
- iv. Certification that the SEP has been fully implemented pursuant to

the provisions of this Decree.

(b) The submissions required under this paragraph shall be signed by a corporate official with responsibility for completion of each of the SEPs and shall include the certification set forth in paragraph 26 below.

24. Within 30 days after receiving the SEP Completion Report(s), EPA shall notify Defendant whether it has satisfactorily completed the SEP(s). If EPA believes that the reported SEP has not been satisfactorily completed, it shall specify the basis and reasons for such assertion and shall provide Defendant an opportunity to cure such deficiencies within 45 days. Stipulated penalties may be assessed under Section VII of this Consent Decree for failure to complete the SEP(s).

25. From the date of lodging of this Decree, any public statement, oral or written, in print, film or other media, made by Defendant publicizing the SEPs shall include the following language: "These projects were undertaken in connection with the settlement of an enforcement action, United States v. Essroc Cement Corporation, taken on behalf of the U.S. Environmental Protection Agency under the Clean Air Act."

VI. REPORTING REQUIREMENTS

26. All reports required under this Consent Decree shall be submitted to the persons designated in Section XII of the Decree (Notices). All reports shall be signed by a responsible Essroc official and shall include the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and

knowledgeable personnel properly gathered and presented the information contained therein. I further certify, based on my personal knowledge, or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing and willful submission of a materially false statement.

27. The reporting requirements of this Consent Decree do not relieve Defendant of any other reporting obligation imposed by the CAA or its implementing regulations, or by another federal, state or local law, regulation or permit.

VII. STIPULATED PENALTIES

28. If Defendant fails to pay the civil penalty required to be paid under Section III of this Decree when due, Defendant shall pay a stipulated penalty of \$10,000 per day for each day that the payment is late.

29. SEP Compliance

(a) For failure to comply with a deadline for completion of any SEP performance milestone or substantive requirement set forth in Section V of this Decree except for the cost expenditure provisions in paragraphs 15 and 18 of the Decree, Defendant shall pay stipulated penalties as follows:

<u>Penalty per Violation per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1 st through 14 th day
\$2,500	15 th through 30 th day
\$5,000	31 st day and beyond

(b) If Defendant abandons work on a SEP, it shall pay a stipulated penalty of

\$1000 in addition to the foregoing per day penalties.

(c) If Defendant completes a SEP but has spent less than the estimated cost of that SEP in paragraphs 15 and 18 of this Decree, it shall pay to the United States a stipulated penalty equal to the difference between the SEP costs it has incurred and the amounts in those paragraphs, which were relied upon for mitigation of the civil penalty in this case .

30. Stipulated penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Payment of all stipulated penalties under this Section shall be made in accordance with the payment procedures in paragraph 7 of this Decree. In the case of late payment of the civil penalty, Defendant shall note in its transmittal correspondence which portion is for payment of the civil penalty and which portion is for the applicable stipulated penalty.

31. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Decree.

32. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, the United States shall be entitled to collect interest on such penalties, as provided for in 28 U.S.C. §1961.

VIII. FORCE MAJEURE

33. For purposes of this Consent Decree, a "*force majeure*" event is an event beyond the control of Defendant, its contractors or any entity controlled by Defendant that delays or prevents performance of any obligation under this Consent Decree, despite Defendant's best

efforts to fulfill the obligation. "Best efforts" includes anticipating any potential *force majeure* event and addressing the effects of any such event as it is occurring and after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "*Force majeure*" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

34. Defendant shall provide notice to EPA in writing and/or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time that the Defendant first knew of, or by the exercise of due diligence should have known of, a claimed *force majeure* event. The notice shall state the anticipated duration of any delay; its causes(s); and the measures taken or to be taken by Defendant to prevent or minimize any delay, with a schedule for carrying out those actions. Failure to give such notice shall preclude a Defendant from asserting any claim of *force majeure*.

35. If EPA agrees that a *force majeure* event has occurred, the Parties may, by stipulation, agree to extend the time the Defendant needs to complete its obligation. Defendant shall not be liable for stipulated penalties for the period of delay that EPA deems to have been caused by a *force majeure* event.

36. If EPA does not agree with Defendant's *force majeure* claim or the Parties are unable to agree to the extension of time needed to perform the affected requirements of this Consent Decree, EPA's position shall be binding, unless the Defendant invokes dispute resolution under Section IX of this Consent Decree. In any such dispute, the Defendant bears the burden of proving, by a preponderance of the evidence, that any delay or impediment to performance was caused by circumstances beyond its control and that it exercised best effort to prevent

or minimize any delay caused by the event.

IX. DISPUTE RESOLUTION

37. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree.

38. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when the Defendant sends EPA a written Notice of Dispute stating clearly the matter in dispute and the Defendant's position with respect to the matter. The period of informal negotiations shall not exceed 20 days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then EPA's position shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

39. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding paragraph, by serving on EPA a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not be limited to, any factual data, analysis or opinion supporting the Defendant's position and any supporting documentation relied upon by the Defendant.

40. EPA shall serve its Statement of Position within 45 days of receipt of Defendant's Statement of Position. EPA's Statement of Position shall include, but may not be limited to, any

factual data, analysis or opinion and all supporting documentation relied upon by EPA. Within 15 days of receipt of EPA's Statement of Position, Defendant may submit a Reply. An administrative record of the dispute, which includes all Statements of Position and supporting documentation shall be maintained by EPA. EPA will issue a final decision based on this record.

41. EPA's final decision shall be binding on the Defendant unless, within 30 days of receipt of EPA's final determination, Defendant files a motion for judicial review of the dispute by the Court. EPA may respond (and Defendant may reply) within the time periods provided in the Local Rules of this Court.

42. In any dispute under this Section, the Defendant shall bear the burden of demonstrating that its position clearly complies with this Consent Decree and the Clean Air Act and that the Defendant is entitled to relief under applicable law. Plaintiff reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

43. The invocation of dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Defendant under this Consent Decree, not directly in dispute. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of non-compliance, but payment shall be stayed pending final resolution of the dispute. If the Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties)

X. RIGHT OF ENTRY AND RECORD RETENTION

44. The United States and its representatives, including attorneys, contractors

and consultants, shall have the right of entry to the Facility covered by this Consent Decree, at all reasonable times and upon presentation of credentials, to monitor the progress of activities required under this Consent Decree, verify any data or information submitted to the United States under this Consent Decree and to assess Defendant's compliance with this Decree.

45. Until three years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all records and documents (including records or documents in electronic form) that are or come into their possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This record retention requirement shall apply regardless of any corporate or institutional document retention policy to the contrary. During this record retention period, the United States may request copies of any document or record required to be maintained under this paragraph.

XI. NOTICES

46. Unless otherwise specified herein, whenever notifications, submissions or communications are required by this Consent Decree, they shall be in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-2090/1

To EPA:

Susan Perdomo
Associate Regional Counsel
U.S. EPA, Region 5
77 W. Jackson Blvd. (C-14J)
Chicago, IL 60604
and
Compliance Tracker
Air Enforcement and Compliance Assurance Branch
U.S. EPA, Region 5
77 W. Jackson Blvd. (AE-17J)
Chicago, IL 60604

47. Either Party may, by written notice to the other Party, change its designated notice recipient or notice address provided above.

XII. LODGING AND PUBLIC PARTICIPATION

48. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent to entry of the Consent Decree if the comments received disclose facts or considerations indicating that the Consent Decree is inappropriate, improper or inadequate. If there are no public comments or no changes to the Decree are proposed in response to public comments, Defendant consents to entry without further notice.

XIII. RETENTION OF JURISDICTION

49. The Court shall retain jurisdiction of this case after entry of this Consent Decree and until its termination, to enforce compliance with its terms, to take any action necessary or appropriate for its interpretation, execution or modification, including the resolution of disputes

pursuant to Section IX.

XIV. MODIFICATION

50. Except as specifically provided for herein, there shall be no modification or amendment to this Consent Decree without written agreement of the Parties and approval by the Court. Changes to technical and scheduling provisions in paragraphs 15 through 20 and/or Attachments A and B may be made without approval by the Court upon written agreement between EPA and the Defendant.

XV. TERMINATION

51. After all sums due under Sections III and VII have been paid in full, the SEP requirements in Section V have been completed, and Essroc has satisfied the reporting requirements in the Decree for nine quarters of reporting or through December 31, 2009, whichever is later, Defendant may request that this Decree be terminated by submitting a written statement and, if applicable, the necessary supporting documentation to EPA.

52. If, within 60 days of receipt of Defendant's statement, EPA agrees that the Decree may be terminated, it shall so notify the Defendant and the Parties may submit, for the Court's approval, a joint stipulation or motion terminating this Consent Decree. If, within the 60 day period, EPA indicates in writing that it does not agree that the Decree may be terminated, Defendant may invoke dispute resolution under Section IX of this Decree, beginning with the informal procedures in paragraph 38 of the Decree.

XVI. MISCELLANEOUS

53. Costs The Parties shall bear their own costs in this action, including attorneys'

fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by the Defendant to enforce the provisions of this Consent Decree.

54. Effective Date The effective date of this Consent Decree shall be the date on which it is entered by the Court.

55. Integration This document contains the entire understanding of the Parties relating to the subject matter herein and supersedes any prior negotiations, agreements or understandings, whether oral or written.

56. Counterparts This Consent Decree may be signed in counterparts, each of which shall be deemed an original but all of which taken together constitute one and the same instrument.

57. Authority Each Party's undersigned representatives certifies that he or she is authorized to execute this Consent Decree and to legally bind that Party to its terms and conditions.

58. Final Judgment Upon approval and entry of this Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and the Defendant. The Court finds that there is no just reason for delay and therefore enters this Decree as a final judgment under Fed. R. Civ. P. 54 and 58.

THE UNDERSIGNED PARTIES enter into this Consent Decree and submit it to the Court for approval and entry.

Essroc Clean Air Act Consent Decree

FOR THE UNITED STATES OF AMERICA

DATE: 14 Nov. 2007

RONALD J. TENPAS
Acting Assistant Attorney General
Environmental Enforcement Section
Environment and Natural Resources Division

DATE: 28 Nov 2007

GREGORY L. SUKYS
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Post Office Box 7611
Washington, D.C. 20044
(202) 514-2068/616-6584

TIMOTHY MORRISON
Acting United States Attorney
Southern District of Indiana

DATE: 12/3/07

SHELESE WOODS
Assistant U.S. Attorney
10 West Market Street
Suite 2100
Indianapolis, IN 46204
(317) 229-2416

Essroc Clean Air Act Consent Decree

FOR THE U.S. ENVIRONMENTAL PROTECTION
AGENCY

DATE: 10/9/07

ROBERT A. KAPLAN ✓

Regional Counsel

U.S. Environmental Protection Agency, Region 5

77 West Jackson Blvd.

Chicago, IL 60604-3590

Essroc Clean Air Act Consent Decree

FOR ESSROC CEMENT CORPORATION

Date: October 4, 2007

(Name) George E. Gregory

President & COO

(Title)

Dated and entered this _____ day of _____, 2007

UNITED STATES DISTRICT JUDGE

ATTACHMENT A

ATTACHMENT A

CLINKER BUILDING DUST CONTROL and AIR CURTAIN

The removal of fugitive dust is accomplished with the addition of an air curtain at the main entrance and a large dust collector for the removal of dust from the building. The air curtain at the north entrance to the clinker storage building provides a method for controlling dust in the area where the front-end loaders enter and exit the building. The dust collector is sized to collect dust from the area near the air curtain and to keep the building pressure slightly negative.

The dust collector will be located to the west of the existing front end loader entrance and will deposit collected dust back into the building. The new electric building will be located between the new dust collector and the northwest corner of the clinker storage hall.

Related Improvements:

STAIR TOWER BELT DUST COLLECTOR

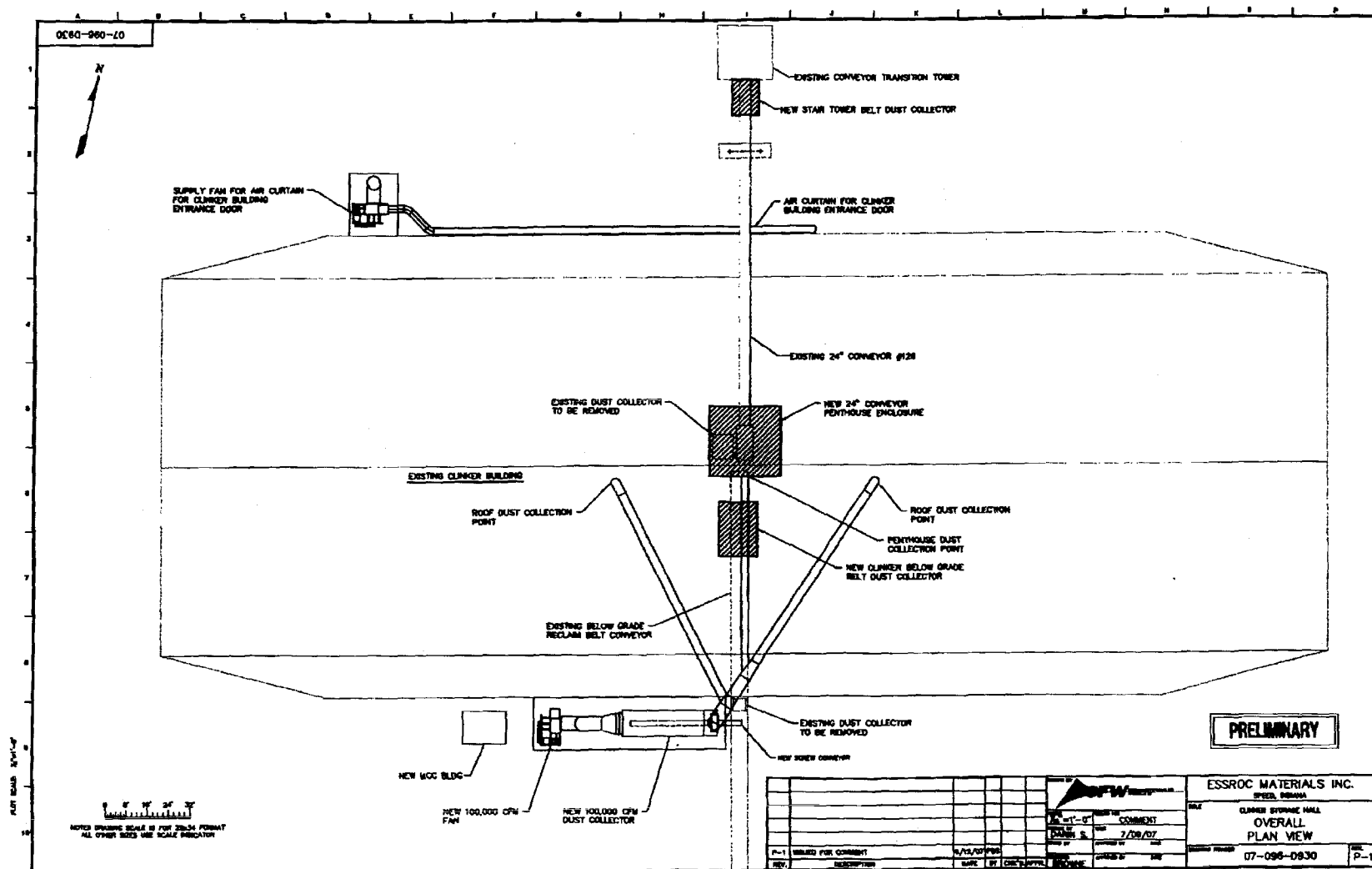
The transfer point at the tower north of the clinker storage building currently has excessive fugitive dust. The installation of a horizontal dust collector at this transfer point will eliminate this fugitive dust.

CLINKER BUILDING BELOW GRADE BELT DUST COLLECTOR

The transfer point from the reclaim hopper to the belt feeding the clinker silos at the finish mill area is a dust containment problem. The existing dust collector is more than 25 meters away and is located on the ceiling of a tunnel. This fills with dust and consequently the collector will not pick up the dust. The installation of a horizontal dust collector will eliminate this problem.

RELOCATION OF ROOF MOUNTED DUST COLLECTOR AT THE TRANSFER POINT FROM THE CLINKER BUILDING FEED BELT TO THE TRIPPER BELT.

Relocating the existing dust collector to a point directly over this transfer point will allow for the closing of the building and eliminate the chimney effect that is created at this point. Also eliminated with this move is the need for a screw line to move the collected dust to the conveyor belt.



ATTACHMENT B

